

EXHIBIT 2

From: owner-pbm@listserv.motleyrice.com <owner-pbm@listserv.motleyrice.com> **On Behalf Of** Sage Vanden Heuvel

Sent: Monday, May 13, 2024 10:43 PM

To: 2804 Discovery, MDL <mdl2804discovery@motleyrice.com>; pbm@listserv.motleyrice.com; Paul Farrell Jr. <paul@farrellfuller.com>; Laura Dunning <ldunning@levinlaw.com>; Anthony Irpino <airpino@irpinolaw.com>; Optum Opioid Team <Optum.Opioid.Team@alston.com>

Cc: ESI-Opioids <esi-opioids@quinnemanuel.com>

Subject: In re National Prescription Opioid Litigation: Tracks 12-15 - Express Scripts' Responses to Plaintiffs' Second Set of Discovery Requests

Counsel,

Please see the attached responses and objections from the Express Scripts Defendants to Plaintiffs' Second Set of Combined Discovery Requests.

Best,
Sage

Sage R. Vanden Heuvel

Of Counsel

Quinn Emanuel Urquhart & Sullivan, LLP

865 S. Figueroa Street, 10th Floor

Los Angeles, CA 90017

213-443-3657 Direct

213-443-3000 Main Office Number

213-443-3100 Fax

sagevandenheuvel@quinnemanuel.com

www.quinnemanuel.com

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

**IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION**

MDL No. 2804

Case No.: 1:17-MD-2804

Judge Dan Aaron Polster

This document relates to:

City of Rochester v. Purdue Pharma, L.P.,
No. 19-op-45853 (“Track 12”);
Lincoln County v. Richard Sackler, M.D.,
No. 20-op-45069 (“Track 13”);
City of Independence, Missouri v. Williams,
No. 19-op-45371 (“Track 14”);
County of Webb, Texas v. Purdue Pharma,
L.P., No. 18-op-45175 (“Track 15”)

**RESPONSES AND OBJECTIONS OF EXPRESS SCRIPTS PHARMACY, INC.,
ESI MAIL PHARMACY SERVICE, INC., ESI MAIL ORDER PROCESSING,
INC., AND EXPRESS SCRIPTS SPECIALTY DISTRIBUTION SERVICES, INC.,
TO PLAINTIFFS’ SECOND SET OF COMBINED DISCOVERY REQUESTS**

In accordance with Federal Rules of Civil Procedure 26, 33, and 34, as well as the Court’s order granting additional discovery (Dkt 5412), Defendants Express Scripts Pharmacy, Inc., ESI Mail Pharmacy Service, Inc., ESI Mail Order Processing, Inc., and Express Scripts Specialty Distribution Services, Inc. (collectively, “**ESI Mail Pharmacy**”), hereby provide responses and objections to Plaintiffs’ Second Set of Combined Discovery Requests (the “**Requests**”).

RESERVATION OF RIGHTS

1. The following responses and objections are based on, and therefore limited by, ESI Mail Pharmacy’s present knowledge at the time these responses and objections

were served. ESI Mail Pharmacy reserves the right to supplement or revise its responses and objections at any time if it becomes necessary or appropriate to do so.

2. ESI Mail Pharmacy's responses, objections, and/or any election to produce information or documents in response to a Request, notwithstanding its objectionable nature, is not and may not be construed as an admission that any such information or documents exist or waiver of ESI Mail Pharmacy's right to object to the use of any information or documents provided in response to these Requests at any trial, evidentiary hearing, or other proceeding on grounds of privilege, relevance, confidentiality, materiality, hearsay, or any other ground permitted by any applicable law or rule.

3. Any information or documents that may be produced in response to the Requests are for use in this action only and for no other purpose.

PRELIMINARY STATEMENT

ESI Mail Pharmacy objects to the definition of "You" and "Your" on the grounds that it is overly broad and disproportionate to the needs of the case. ESI Mail Pharmacy responds on behalf of the four named ESI Mail Pharmacy defendants. Evernorth Health, Inc., and the Express Scripts PBM entities have responded separately to these Requests. Consistent with the Court's ruling on temporal scope, ESI Mail Pharmacy construes the temporal scope of the Requests as January 1, 1996 to December 31, 2019.

OBJECTIONS AND RESPONSES TO REQUESTS

Request No. 1

To clarify the PEC Initial Discovery Requests and prioritize your responses thereto, please identify and produce all contractual agreements with Purdue Pharma and specify the

documents in sufficient detail to enable the PEC to locate and identify the documents as readily as you. *See* FRCP 33(d)(1).

Objections and Responses to Request No. 1

Objections. ESI Mail Pharmacy objects to this Request as not proportional to the needs of the case and as unduly burdensome since this Request is duplicative of Request No. 14 from Plaintiffs' Initial Set of Discovery Requests dated December 29, 2023.

Response. Subject to and without waiving its objections, ESI Mail Pharmacy responds that it will produce and identify any contractual agreements responsive to this request located after a reasonable search. ESI Mail Pharmacy will supplement its response to this Request after the production of additional contracts is complete.

Request No. 2

To clarify the PEC Initial Discovery Requests and prioritize your responses thereto:

- a. Please produce all *communications* with Purdue Pharma relating to prescription opioids.
- b. Please produce all communications with Purdue Pharma leading up to the initial placement of *OxyContin* on your national formulary and/or any changes thereto.
- c. Please produce all documents related to your internal decision-making process to place *OxyContin* on your national formulary and/or any changes made thereto.
- d. Please produce all communications (including newsletters and mailings) with clients regarding the placement of *OxyContin* on your national formulary and/or changes made thereto.
- e. Please produce all communications (including newsletters and mailings) with physicians regarding the placement of *OxyContin* on your national formulary and/or changes made thereto.

- f. Please produce all public announcements regarding the placement of *OxyContin* on your national formulary and/or changes made thereto.
- g. Please produce all documents and communications with Purdue Pharma related to “*counter-promotional efforts*” against *OxyContin*.
- h. Please produce all documents and communications with Purdue Pharma related to the placement of *OxyContin* on the national formulary “*without restriction*” and/or communications related to violations thereof.
- i. Please produce all documents and communications with Purdue Pharma related to “*OxyContin quantity limits*” and/or tier placement.
- j. Please produce all *rebate audit data* provided to or received from Purdue Pharma.
- k. Please identify all *educational programs* related to prescription opioids in which you participated with Purdue Pharma and produce all documents related thereto.
- l. Please identify all *marketing programs* related to prescription opioids in which you participated with Purdue Pharma and produce all documents related thereto.
- m. Please identify all *studies* (whether proposed, undertaken or completed) related to prescription opioids in which you participated with Purdue Pharma and produce all documents related thereto.
- n. Please identify all *patient assistance programs* related to prescription opioids in which you participated with Purdue Pharma and produce all documents related thereto.
- o. Please produce all communications with *Laura Randa King, Bernie Katsur, Lynn Nagorski, and/or Tim Richards* (former Purdue Pharma employees) related to prescription opioids.
- p. Please identify and produce all documents which evidence *payments* made by Purdue Pharma to you relating to prescription opioids including administrative fees, rebates, refunds and the like.
- q. Please produce all documents related to the negotiation of *rebates* and/or *administrative fees* with Purdue Pharma.
- r. For Express Scripts, consistent with ¶ 5.2 of the *Reimbursement Agreement* with Purdue Pharma (e.g., PDD1782068808), please produce all “rebate

grand total reports, rebate summary reports, rebate Pharmacy detail reports, detail prescriptions claims data (with Member identifiers masked), enrollment data, the sections of Plan contracts authorizing formulary management services, formulary information, records of intervention programs and the claims adjudication process [...].”

- s. For Express Scripts, consistent with ¶ 6 of the *Reimbursement Agreement* with Purdue Pharma (e.g., PDD1782068808), please produce all documents related to *Quarterly Review Meetings*.
- t. Please produce all documents related to “Situation Review for Express Scripts (PPLPC035000005854) including internal communications, external communications, emails and/or other documents related thereto.
- u. Please produce all documents related to “Chronic Pain Management” (PPLPC036000014773) including internal communications, external communications, emails and/or other documents related thereto.
- v. Please produce all documents related to “LOW BACK PAIN: Pain Management” (PPLPC035000016919) including internal communications, external communications, emails and/or other documents related thereto.
- w. Please produce all contracts, communications and/or other documents exchanged between Phoenix Marketing Group and Purdue Pharma.
- x. Please produce all contracts, communications and/or other documents exchanged between Ingenix and/or OptumInsight and Purdue Pharma.

Objections and Response to Request No. 2

Objections. ESI Mail Pharmacy objects to this Request as not proportional to the needs of the case and unduly burdensome, including because it is a compound request, it does not comply with FRCP 33 or FRCP 34, it is vague and ambiguous, and it is largely duplicative of prior requests from Plaintiff’s First Set of Requests dated December 29, 2023.

ESI Mail Pharmacy further objects to this Request to the extent it calls for the production of documents that are protected by the attorney-client privilege, the attorney

work product doctrine, or any other applicable privilege, protection, or immunity. ESI Mail Pharmacy will not produce such documents in response to the Request.

ESI Mail Pharmacy further objects to this Request to the extent it calls for the production of documents that ESI Mail Pharmacy or its affiliates have a statutory, contractual, or other obligation to maintain as confidential, including without limitation, patient health information that is protected from disclosure under federal or state law.

Response. Subject to and without waiving its objections, ESI Mail Pharmacy responds to Request No. 2 as follows:

Subparts 2(u), 2(v), and 2(x) of Request No. 2 are directed solely towards other defendants (namely, the OptumRx Defendants), and ESI Mail Pharmacy does not have materials responsive to them.

For the other subparts of Request No. 2, ESI Mail Pharmacy will produce non-privileged responsive documents located after a reasonable search, including through the use of agreed-upon custodians and search terms.

With respect to Subparts 2(b), 2(c), 2(d), 2(e), 2(f), 2(g), 2(h), 2(i), 2(j), 2(k), 2(l), 2(o), 2(p), 2(q), 2(r), 2(s) and 2(v), ESI Mail Pharmacy further responds that they are directed at pharmacy benefit manager (PBM) defendants, not mail order pharmacy defendants, and ESI Mail Pharmacy is not aware of having materials responsive to them.

Request No. 3

To clarify the PEC Initial Discovery Requests and prioritize your responses thereto, with respect to each of the following Committees, Teams, or Groups, please (i) identify all members or persons involved therein and the time period of their involvement, (ii) produce

all charters, policies, procedures and/or protocols including prior versions and/or revisions, (iii) produce all documents *related to prescription opioids* including but not limited to, materials relied upon, intra-committee/group/team communications, inter-committee/group/team communications (with other committees), communications with prescription opioids manufacturers, emails (internal and external), minutes (or other summary documents), agendas, Committee/group/team work product and/or reports generated therefrom, and (iv) produce all documents related to OxyContin.

- a. Pharmacy and Therapeutics Committee (“P&T” Committee)
- b. Therapeutic Assessment Committee (“TAC”)
- c. Value Assessment Committee (“VAC”)
- d. Clinical Integrity Council (“CIC”)
- e. Trade Relations Group (“TRG”)
- f. Fraud, Waste and Abuse (“FWA”)
- g. Committees, groups, or teams responsible for Concurrent and/or Retrospective Drug Utilization Review (“CDUR” and “RDUR”)
- h. Clinical Programs Subcommittee (“CPS”)
- i. Business Implementation Committee (“BIC”)
- j. Drug Intelligence Team (“DIT”)
- k. Formulary Management Committee (“FMC”)
- l. Industry Relations Group (“IRG”)
- m. Office of Clinical Evaluation and Policy (“OCEP”)
- n. Drug Evaluation Unit (“DEU”)

Objections. ESI Mail Pharmacy objects to this Request as not proportional to the needs of the case and unduly burdensome, including because it is compound, it does not comply with FRCP 33 and 34, and it is partially duplicative of prior Requests.

ESI Mail Pharmacy further objects to this Request to the extent it calls for the production of documents that are protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege, protection, or immunity. ESI Mail Pharmacy will not produce such documents in response to the Request.

ESI Mail Pharmacy further objects to this Request to the extent it calls for the production of documents that ESI Mail Pharmacy or its affiliates have a statutory, contractual, or other obligation to maintain as confidential, including without limitation, patient health information that is protected from disclosure under federal or state law.

Response. Subject to and without waiving its objections, ESI Mail Pharmacy responds that the teams, committees, groups, and departments listed in this Request are not teams, committees, groups, or departments at ESI Mail Pharmacy, and ESI Mail Pharmacy is not aware of having materials responsive to this Request.

Request No. 4

On March 15, 2024, Express Scripts uploaded Production No. 15 to Ricoh which included Express Scripts's production to the U.S. Senate Permanent Subcommittee on Investigations in 2016 (ESI_MDL_000018696—ESI_MDL_000019965). That production evidenced the existence of documents and information responsive to the PEC's Initial Discovery Requests which have not been produced or provided. Please prioritize the

following discovery, which should be produced without geographic limitation, unless otherwise specifically noted:

- a. Please produce all communications with the United States Senate Permanent Committee on Investigations related to its investigation of “opioid utilization and overprescribing” (*see e.g.*, ESI_MDL_000018696).
- b. Please produce all Express Scripts Investigation Reports related to *providers* (e.g., ESI_MDL_18788) nationwide related to prescriptions opioids.
- c. Please produce all Express Scripts Investigation Reports related to *beneficiaries* (e.g., ESI_MDL_000018757) residing within the bellwether jurisdictions related to prescription opioids.
- d. Please produce all “Opioid Case Management program reviews” of *beneficiaries* (e.g., ESI_MDL_000018757) residing within the bellwether jurisdictions.
- e. Please produce all Express Scripts “referrals to NBI MEDIC” (*see e.g.*, ESI_MDL_000018955) related to prescription opioids.
- f. Please produce all documents related to your “Disease Strategy” for “Opioids for Pain Management” (*see e.g.*, ESI_MDL_000019870) including all documents related to its drafting, adoption, implementation and/or dissemination.

Objections and Response to Request No. 4

Objections. ESI Mail Pharmacy objects to this Request as not proportional to the needs of the case and unduly burdensome, including because it is compound, it does not comply with FRCP 33 and 34, and it is partially duplicative of prior Requests.

ESI Mail Pharmacy further objects to this Request to the extent it calls for the production of documents that are protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege, protection, or immunity. ESI Mail Pharmacy will not produce such documents in response to the Request.

ESI Mail Pharmacy further objects to this Request to the extent it calls for the production of documents that ESI Mail Pharmacy or its affiliates have a statutory, contractual, or other obligation to maintain as confidential, including without limitation, patient health information that is protected from disclosure under federal or state law.

Response. Subject to and without waiving its objections, ESI Mail Pharmacy responds that this Request is directed towards the Express Scripts PBM entities, and ESI Mail Pharmacy is not aware of having materials responsive to this Request.

Dated: May 13, 2024

By: /s/ Jonathan G. Cooper
Michael J. Lyle
Jonathan G. Cooper
Matthew Wasserman
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
1300 I Street, NW, Suite 900
Washington, D.C. 20005
Telephone: (202) 538-8000
Facsimile: (202) 538-8100
mikelyle@quinnemanuel.com
jonathancooper@quinnemanuel.com
matthewwasserman@quinnemanuel.com

Sage R. Vanden Heuvel
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
865 S. Figueroa St. Floor 10
Los Angeles, CA 90017
Telephone: (202) 443-3000
Facsimile: (202) 443-3100
sagevandenheuvel@quinnemanuel.com

*Attorneys for Defendants Express Scripts
Pharmacy, Inc., ESI Mail Pharmacy Service,
Inc., ESI Mail Order Processing, Inc., and
Express Scripts Specialty Distribution
Services, Inc.*